

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMMITA LOUISE WILLIS,

Defendant-Appellant.

UNPUBLISHED

March 11, 2003

No. 235697

Kent Circuit Court

LC No. 00-009499-FH

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

MEMORANDUM.

Defendant appeals as of right her jury trial conviction of prisoner in possession of contraband, MCL 800.281(4), and conspiring to bring contraband into a prison, MCL 800.281(3). We affirm.

Defendant argues on appeal that the “trial court’s instructions that the proof beyond a reasonable doubt meant only that they had to be firmly convinced the defendant was guilty was an unconstitutional dilution of the burden of proof.” We disagree. Because defendant failed to object to the disputed jury instructions, we review this issue for plain error affecting defendant’s substantial rights. See *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999); *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000).

Defendant claims that the trial court’s instructions to the jury were constitutionally deficient because the instructions only required the jury to be “firmly convinced” of defendant’s guilt to convict. In particular, the trial court instructed that “[i]f you are firmly convinced [that defendant committed one or more of the crimes], then you’ve been convinced beyond a reasonable doubt.” In *People v Bowman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 230381, issued November 15, 2002), this Court considered the argument that “equating proof beyond a reasonable doubt with proof that leaves the jurors ‘firmly convinced’ of guilt . . . diluted the standard for a criminal conviction.” After noting that the “firmly convinced” explanation of the “proof beyond a reasonable doubt” standard was provided by the criminal jury instructions developed by the Federal Judicial Center and had been upheld in several federal cases, as well as by the United States Supreme Court, this Court rejected the argument. *Id.*, slip op at 4-5. We, likewise, reject the argument. See MCR 7.215(I)(1). Consequently, defendant’s

claim of ineffective assistance of counsel premised on her trial counsel's failure to object to the same jury instructions is also without merit. See *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998).

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra